IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ADMIRALTY AND VICE ADMIRALTY JURISDICTION

ADMIRALTY SUIT NO. 21 OF 2001

Union of India .....Plffs.
vs.
MFV 'SEA BAY-II' and Anr. .....Defnds.

Rahul Narichania with R.N. Mulla i/b. Mulla and Mulla and Cragie Blunt and Caroe for the plffs.

None for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 21ST JULY, 2005.

P.C. :

1. The present suit is filed for the recovery of sum of Rs.1,74,33,771.50/- with interest thereon at the rate of 18% pa. from 16.7.2001 till payment and or realisation. It is also prayed that inrespect of repayment of the said claim it be declared that the vessel m.f.v. 'SEASBAY VENTURE' is duly mortgaged to the plaintiff. The brief facts of the present case are as under :

2. The plaintiff no.2 is ICICI Ltd and the plaintiff no.1 is Union of India. It is the case of the plaintiff that under the provisions of Shipping Development Fund Committee (abolition) Act, 1986 the second plaintiff is appointed as designated person in exercise of power conferred under sub-section (1) of S.16 of the Shipping

Development Fund Committee (Abolition) Act, 1986. The defendant no.1 is an Indian Flag vessel and it at present is lying/anchored in the Port of Cochin, Kerala. The second defendant is the company who is the owner of the vessel.

3. It is the case of the plaintiff that prior to 3.4.1987 a statutory body namely Shipping Development Fund Committee (SDFC) was constituted under s.15 of the Merchant Shipping Act, 1958 inter-alia empowering the plaintiff to grant financial assistance to the various persons prescribed under s.21 of the Merchant Shipping Act, 1958. By an act known as Shipping Development Fund Committee (Abolition) Act, 1986 which has been brought into force from 3.4.1987. The said shipping development Fund Committee was abolished and the government of India appointed Shipping Credit and Investment Corporation of India (SCICI Ltd) as designated person'. The said SDFC was amalgamated and merged with ICICI. The said merger has taken place pursuant to the order passed by this court in Company Petition No. 620 of 1997

dated 3.4.1997. Thus the plaintiff claims that the mortgage of the said vessel is vested with the plaintiff no.2. In the said amalgamation all the rights and privileges are vested in the plaintiff no.1 including the properties as well as in the hands of SDFC. Prior to the payment dated 3.4.1987 by another notification dated 3.4.1987 issued by the Department of Economic Affairs Banking Division the said SDFC has been abolished.

4. In the present case the liabilities arises out of loan agreement dated 27.3.1987 between SDFC AND the second defendant who is the owner of the vessel. In the said term loan agreement the said SDFC agreed to give a rupee loan to the second defendant for sum of RS. 74,12,000/- on the various terms and conditions set out therein. The said amount was at the interest rate of 8% p.a. It was further provided that if the interest is paid on due dates then the interest shall reduce from 8% to 6.75% p.a. The said amount was to be repaid in 15 equal annual instalments which were to commence after one years morratium period. The said loan

agreement was executed pursuant to a building contract entered into between Goa Shipping Yard Limited as Builder and the second defendant on 23.3.1987 for construction and acquisition by purchase of 23.5 mts fishing Trawler bearing Yard No.1146.

5. Pursuant to the said arrangement from time to time erstwhile SDFC in which the second defendant is the successor in title lent and advanced a sum of Rs.69,77,600/- and a tri-partite agreement was arrived at dated 27.3.1987. A deed of hypothecation for work and progress inrespect No. Yard 1146 dated 25.3.1998 was also executed.

6. In terms of the aforesaid contract between the parties a vessel was mortgaged to the plaintiff for due repayment of the amount lent and advanced of Rs. 69,77,800/-. The necessary statutory form being mortgage form has been duly filed by the plaintiff and the statutory mortgage and deed of hypothecation dated 17.8.1989 has been executed and duly registered on 18.9.1989.

7. It is the case of the plaintiff that the said ship is registered with the Registrar of Indian Ships, Mercantile Marine Department, Ministry of Surface Transport have conveyed their approval in favour of the second defendant and mortgaged the said ship in favour of the plaintiff herein for Rs.69,69,600/- with interest thereon, if any. Apart from the aforesaid mount the second defendant has also provided a bank guarantee for RS,10,31,520/- for any short fall in security cover and agreed to pay interest amount of Rs.2,95,997/- in six half yearly instalments from 16.12.1989. It is the case of the plaintiff that the defendant no.2 has failed to make re-payment of the said amount and interest thereon and thus in exercise of power conferred under the Merchants Shipping Act the plaintiffs have exercised the said mortgage. According to the plaintiff there was due and payable by the second defendant aggregating to Rs.1,39,462.50/- as on 30.6.98 alongwith interest and inrespect thereof a notice was issued by the plaintiff on 4.8.1998. Inspite of the said notice

the defendant neither paid the amount. However by letter dated 4.2.1999 an 23.9.1999 the second defendant requested the plaintiff that the matter should be amicably settled on the basis of one time settlement and they have agreed to repay the amount on one time settlement basis by reduction on the interest amount. However the said proposal did not fructified as the defendant neglected to make any payment whatsoever inrespect of the said claim. According to the plaintiff there is amount due and payable of Rs.1,74,33,751.50/- alongwith interest at the rate of 18% p.a. as set out in the statement of claim being Ex.B to the plaint. In view of the non-payment the plaintiff has filed the present suit for the recovery of the said amount and for enforcement of the mortgage in their favour of the first defendant vessel. Various other reliefs are also sought. The said vessel is still lying in the Port of Cochin and the same is the subject matter of security. In the present suit the plaintiffs are seeking to enforce the said mortgage. The defendants are served. One Advocate Ms. Dipti Shah has also filed her vakalatnama but

she has not appeared in the matter. However it seems that she has taken discharge subsequently and none appears for the defendants. Accordingly the matter was placed for an ex-parte decree. After the amendment was granted the plaintiffs sought to serve the amended plaint once again on the defendants. However it was found that the defendant no.2 is no longer carrying on business at the address given and has shifted to Canada and the address is not available. Affidavit of service dated 8.6.2005 is already taken on record. The plaintiff has filed compilation of documents containing loan agreement, tripartite agreement, subsidiary agreement and also mortgage deed are taken on record and marked Exh.P.1 colly. The defendant has not appeared. The plaintiff has established his case of mortgage inrespect of the said ship. In the circumstances I pass the following order :

There shall be decree in terms of prayer clause (a) to (e). However

after the sale of the said vessel to the Sheriff the sale proceeds to be deposited with the Prothonotary and Senior Master who shall thereafter follow the procedure as prescribed by the High Court Rules. Suit disposed off accordingly. No order as to costs.

sd/-

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